

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Albert L. Brinkman,

Plaintiff,

vs.

Dora B. Schriro, et al.,

Defendants.

No. CV 08-670-TUC-FRZ

ORDER

I. Background

On December 23, 2008, Plaintiff Albert L. Brinkman, who is confined in the Arizona State Prison Complex-Tucson in Tucson, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. #1) and an Application to Proceed *In Forma Pauperis*. This case was initially assigned to United States District Court Judge Cindy K. Jorgenson.

On January 5, 2009, Plaintiff filed a Motion for Change of Venue (Doc. #3) and a Motion to Recuse Judge (Doc. #4).

In a February 18, 2009 Order (Doc. #5), Judge Jorgenson determined that she should not preside over the case. The case was randomly reassigned to the undersigned Judge.

II. Motion to Recuse Judge

In light of Judge Jorgenson's *sua sponte* decision that she should not preside over this case, the Court will deny as moot Plaintiff's Motion to Recuse.

1 **III. Payment of Filing Fee**

2 When bringing an action, a prisoner must either pay the \$350.00 filing fee in a lump
 3 sum or, if granted the privilege of proceeding *in forma pauperis*, pay the fee incrementally
 4 as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed *in forma pauperis* requires
 5 an affidavit of indigence and a *certified* copy of the inmate's trust account statement for the
 6 six months preceding the filing of the Complaint. 28 U.S.C. § 1915(a)(2). An inmate must
 7 submit statements from each institution where he was confined during the six-month period.
 8 Id. To assist prisoners in meeting these requirements, the Court requires use of a form
 9 application. LRCiv 3.4(a).

10 If a prisoner is granted leave to proceed *in forma pauperis*, the Court will assess an
 11 initial partial filing fee of 20% of either the average monthly deposits or the average monthly
 12 balance in Plaintiff's account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial
 13 partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The
 14 balance of the fee will be collected in monthly payments of 20% of the preceding month's
 15 income credited to an inmate's account, each time the amount in the account exceeds \$10.00.
 16 28 U.S.C. § 1915(b)(2).

17 **IV. Application Fails to Comply With Statute**

18 Plaintiff has used the court-approved form, but has not submitted a certified six-month
 19 trust account statement. Plaintiff must submit a certified six-month trust account statement
 20 from each institution where Plaintiff was confined during the six-month period preceding the
 21 filing of the Complaint. In light of this deficiency, Plaintiff will be permitted 30 days to
 22 either pay the \$350.00 filing fee or file a complete Application to Proceed *In Forma*
 23 *Pauperis*.

24 Although Plaintiff attached a printout of his Arizona Department of Corrections
 25 ("ADOC") inmate bank account statement to the Application to Proceed, the printout does
 26 not show deposits and average monthly balances, as required. ADOC has notified the Court
 27 that a certified trust fund account statement showing deposits and average monthly balances
 28 is available from the ADOC's Central Office. *Accordingly, Plaintiff must obtain the certified*

1 *copy of his ADOC trust fund account statement for the six months immediately preceding the*
 2 *filing of the Complaint from the ADOC's Central Office.*

3 **V. Complaint and Motion for Change of Venue**

4 Until Plaintiff has submitted a complete Application to Proceed, the Court will not
 5 rule on the Motion for Change of Venue and will not screen the Complaint pursuant to 28
 6 U.S.C. § 1915A(a).

7 **VI. Warnings**

8 **A. Address Changes**

9 Plaintiff must file and serve a notice of a change of address in accordance with Rule
 10 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
 11 relief with a notice of change of address. Failure to comply may result in dismissal of this
 12 action.

13 **B. Copies**

14 Plaintiff must submit an additional copy of every filing for use by the Court. See
 15 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
 16 to Plaintiff.

17 **C. Possible Dismissal**

18 If Plaintiff fails to timely comply with every provision of this Order, including these
 19 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,
 20 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
 21 comply with any order of the Court).

22 **IT IS ORDERED:**

23 (1) Plaintiff's Application to Proceed *In Forma Pauperis*, filed with the Complaint,
 24 is **denied without prejudice**.


25 (2) Plaintiff's Motion to Recuse Judge (Doc. #4) is **denied as moot**.

26 (3) Within 30 days of the date this Order is filed, Plaintiff must either pay the
 27 \$350.00 filing fee **or** file a complete Application to Proceed *In Forma Pauperis* and a
 28 certified six-month trust account statement.

1 (4) If Plaintiff fails to either pay the \$350.00 filing fee or file a complete
2 Application to Proceed *In Forma Pauperis* within 30 days, the Clerk of Court must enter a
3 judgment of dismissal of this action without prejudice and without further notice to Plaintiff.

4 (5) The Clerk of the Court must mail Plaintiff a court-approved form for filing
5 an Application to Proceed *In Forma Pauperis* (Non-Habeas).

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7 DATED this 11th day of March, 2009.

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9 
10 FRANK R. ZAPATA
11 United States District Judge
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**Instructions for Prisoners Applying for Leave to Proceed *in Forma Pauperis*
Pursuant to 28 U.S.C. § 1915 in a Civil Action (Non-habeas) in Federal Court**

You must pay the full filing fee of \$350.00 for a civil action. If you later file an appeal, you will be obligated to pay the \$455.00 filing fee for the appeal.

If you have enough money to pay the full filing fee, you should send a cashier's check or money order payable to the Clerk of the Court with your complaint, petition, or notice of appeal.

If you do not have enough money to pay the full filing fee, you can file the action without prepaying the filing fee. However, the court will assess an initial partial filing fee. The initial partial filing fee will be the greater of 20% of the average monthly deposits or 20% of the average monthly balance in your prison or jail account for the six months immediately preceding the filing of the lawsuit. The court will order the agency that has custody of you to withdraw the initial partial filing fee from your prison or jail account as soon as funds are available and to forward the money to the court.

After the initial partial filing fee has been paid, you will owe the balance of the filing fee. Until the filing fee is paid in full, each month you will owe 20% of your preceding month's income. The agency that holds you in custody will collect that money and forward it to the court any time the amount in your account exceeds \$10.00. The balance of the filing fee may be collected even if the action is later dismissed, summary judgment is granted against you, or you fail to prevail at trial.

To file an action without prepaying the filing fee, and to proceed with an action *in forma pauperis*, you must complete the attached form and return it to the court with your complaint. You must have a prison or jail official complete the certificate on the bottom of the form and attach a certified copy of your prison or jail account statement for the last six months. If you were incarcerated in a different institution during any part of the past six months, you must attach a certificate and a certified copy of your account statement from each institution at which you were confined. If you submit an incomplete form or do not submit a prison or jail account statement with the form, your request to proceed *in forma pauperis* will be denied.

Even if some or all of the filing fee has been paid, the court is required to dismiss your action if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief can be granted; or (4) your complaint makes a claim against a defendant for money damages and that defendant is immune from liability for money damages.

If you file more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, you will be prohibited from filing any other action *in forma pauperis* unless you are in imminent danger of serious physical injury.

Place of Confinement

Mailing Address

City, State, Zip Code

_____,)
 Plaintiff,) CASE NO. _____
)
 vs.)
)
 _____,) APPLICATION TO PROCEED
 Defendant(s).) *IN FORMA PAUPERIS*
) BY A PRISONER
) CIVIL (NON-HABEAS)
)

4. Do you have any other sources of income, savings, or assets either inside or outside of the institution where you are confined? ☐ Yes ☐ No

If "Yes," state the sources and amounts of the income, savings, or assets. _____

I declare under penalty of perjury that the above information is true and correct.

DATE

SIGNATURE OF APPLICANT

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, _____, hereby consent to having the designated correctional officials at this institution release to the Court my trust account information. I further consent to having the designated correctional officials at this institution withdraw from my trust account the funds required to comply with the order of this Court for the payment of filing fees in accordance with 28 U.S.C. § 1915(b).

My consent includes withdrawal from my account by correctional officials of partial initial payments to this Court equal to 20% of the greater of:

(A) the average monthly deposits to my account for the six-month period preceding my filing of this action, or

(B) the average monthly balance in my account for the six-month period preceding my filing of this action.

My consent also includes monthly withdrawals from my account by correctional officials of an amount equal to 20% of each month's income. Whenever the amount in my account reaches \$10.00, correctional officials will withdraw that amount and forward it to the Court until the required filing fee is paid in full. I understand that I am liable for paying the entire fee, even if my case is dismissed by the Court before the fee is fully paid.

DATE

SIGNATURE OF APPLICANT

CERTIFICATE OF CORRECTIONAL OFFICIAL AS TO STATUS OF APPLICANT'S TRUST ACCOUNT

I, _____, certify that as of the date applicant signed this application:

(Printed name of official)

The applicant's trust account balance at this institution is: \$ _____

The applicant's average monthly deposits during the prior six months is: \$ _____

The applicant's average monthly balance during the prior six months is: \$ _____

The attached certified account statement accurately reflects the status of the applicant's account.

DATE

AUTHORIZED SIGNATURE

TITLE/ID NUMBER

INSTITUTION